

The Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WASHINGTON HEALTH CARE
ASSOCIATION, a Washington non-profit
corporation; EAGLE HEALTHCARE, INC., a
Washington corporation, d/b/a GRANDVIEW
HEALTHCARE CENTER, HIGHLAND
TERRACE NURSING CENTER,
HILLCREST MANOR, and PINEWOOD
TERRACE NURSING CENTER;
WASHINGTON CARE SERVICES, a
Washington non-profit corporation, d/b/a
WASHINGTON CARE CENTER;
CASHMERE CONVALESCENT CENTER,
INC., a Washington corporation;
SOUNDCARE, INC., a Washington
corporation, d/b/a MESSENGER HOUSE
CARE CENTER; NIKKEI CONCERNS, a
Washington non-profit corporation, d/b/a
SEATTLE KEIRO; SUNRISE VIEW
CONVALESCENT CENTER, L.L.C., a
Washington limited liability company; and
TEKOA MEDICAL FOUNDATION, INC., a
Washington corporation, d/b/a TEKOA CARE
CENTER,

Plaintiffs,

v.

SUSAN N. DREYFUS, Secretary of the
Washington Department of Social and Health
Services; and KATHY LEITCH, Assistant
Secretary of the Aging and Disability Services
Administration,

Defendants.

No. CV09-5395-RBL

**ORDER GRANTING PLAINTIFFS'
MOTION FOR TEMPORARY
RESTRAINING ORDER**

ORDER GRANTING MOTION FOR TEMPORARY
RESTRAINING ORDER (No. CV09-5395-RBL) -1

120338.0012/1729936.1

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1 This Matter came before the Court on July 9, 2009 on Plaintiffs' Motion for
2 Temporary Restraining Order (Dkt. No. 4). Plaintiffs seek to enjoin Defendants from
3 implementing a 7.29% reduction in nursing facility Medicaid reimbursement rates for fiscal
4 year 2010 (July 1, 2009 through June 30, 2010) pursuant to Washington's "budget-dial"
5 statute, RCW 74.46.421, as triggered by the \$156.37 budget-dial rate set forth in ESHB 1244,
6 § 206(1). Present at the hearing were Barbara J. Duffy, Robin Dale, Ryan P. McBride and
7 Theodore A. Sheffield, counsel for Plaintiffs, and William T. Stephens and R. Timothy
8 Crandell, Assistant Attorneys General, counsel for Defendants.

9 The Court has considered the parties' written submissions, declarations and exhibits,
10 and has heard the parties' oral argument presented at the hearing on the motion, and hereby
11 enters the following Order:

12 ORDER

13 1. To be entitled to injunctive relief, Plaintiffs must show that (1) they are likely
14 to succeed on the merits, (2) they are likely to suffer irreparable harm in the absence of
15 preliminary relief, (3) the balance of equities tips in their favor, and (4) an injunction is in the
16 public interest. *Cal. Pharmacists Ass'n v. Maxwell-Jolly*, 563 F.3d 847, 849 (9th Cir. 2009).

17 2. Given the legal, regulatory and public policy considerations inherent to both
18 the nursing facility Medicaid reimbursement system and the state appropriations process, the
19 Court has been presented with a difficult decision with respect to the first two elements for
20 injunctive relief, and its decision is therefore a difficult call. Nevertheless, the Court finds
21 that Plaintiffs have demonstrated a likelihood of success on the claims asserted in their
22 Complaint for Declaratory and Injunctive Relief, and a likelihood that they will suffer
23 irreparable harm absent a temporary restraining order ("TRO"). The Court further finds that
24 the balance of the equities and the public interest support a TRO for a finite time period.

25 3. Therefore, the Court hereby ORDERS that Plaintiffs' Motion for Temporary
26 Restraining Order is GRANTED. Defendants and their agents are ENJOINED from

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RESTRAINING ORDER (No. CV09-5395-RBL) -2

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1 implementing or enforcing the 7.29% reduction in Medicaid reimbursement rates that would
2 result from the application of ESHB 1244, § 206(1) and RCW 74.46.421 against Washington
3 nursing facilities participating in the Medicaid program during the duration of this TRO.

4 4. This TRO shall remain in force until thirty (30) days following a decision by
5 the Centers for Medicare & Medicaid Services ("CMS") either approving or disapproving a
6 proposed amendment to the Washington Medicaid State Plan relating to the establishment of a
7 \$156.37 budget-dial rate. The parties shall immediately notify the Court upon any such
8 decision by CMS.

9 5. No bond is required during the duration of this TRO.

10 6. The parties shall cooperate on the mutual exchange of information and
11 discovery during the duration of this TRO.

12 DATED this 13th day of July, 2009.

13 
14 RONALD B. LEIGHTON
15 UNITED STATES DISTRICT JUDGE

16 Approved and Presented by:

17 LANE POWELL PC

18 s/Barbara J. Duffy

19 Barbara J. Duffy, WSBA No. 18885

20 Robin Dale, WSBA No. 22166

21 Ryan P. McBride, WSBA No. 33280

22 Theodore A. Sheffield, WSBA No. 35874

23 *Attorneys for Plaintiffs*

24 ROBERT MCKENNA

25 Attorney General

26 s/William T. Stephens

William T. Stephens, WSBA No. 24254

R. Timothy Crandell, WSBA No. 12178

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Attorneys for Defendants